IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.778 OF 2005

Sau Changunbai Tukaram Bute .. ..Appellant
Versus
Shri Ananda Dagadu Khandge & Ors.. ..Respondents

Smt.Anjali Helekar for appellant

CORAM : P.V.KAKADE, J.

DATE : 24TH AUGUST, 2005.

P.C.:

1. The appellant has filed the present appeal against the judgment and order passed by Addl. District Judge, Pune dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Khed dismissing the plaintiff's suit for partition.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the for partition and separate possession of her share in the suit property on the ground that she being a daughter in the family has

legitimate share in the property and when it was denied the suit came to be filed. The defendants contested the suit on various grounds, inter alia, submitting that the plaintiff had no right to share in the suit property 0on various legal and factual aspects and as such the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had not proved that she had 1/3rd share in the suit properties and on the other hand the defendants had proved that the suit properties were owned by Dagadu and Maruti Gopala Khandge alone and as such the plaintiff had no share therein and finally suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the lower court were legal and proper and dismissed the appeal. Hence the present appeal.

4. At the outset, it must be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that the

plaintiff, being a daughter of family, had share in the suit property, however, it is seen from the record that marriage of the respondent was performed about 50 years prior to the date of her evidence recorded on 17.9.2001 and therefore, it could be seen that her marriage was performed in the year about 1950-51 i.e. prior to the Hindu Succession Act, 1956 came into force. The record also showed that one Hanumant died in the year 1938 and therefore, the fact on record showed that Hindu Women's Rights to Property Act, 1937 was in force. It is also not in dispute that the widow of Hanumant i.e. Venubai performed her second marriage immediately after the death of Hanumant with Bhaga Gadhave. Venubai delivered one son and one daughter from her second marriage. Both of her children are married and the evidence is also sufficient to show that Venubai had performed second marriage prior to coming into force the Hindu Succession Act, 1956. It was necessary to consider the effect of the marriage of Venubai after the death of Hanumant taking into account the provisions of Hindu Women's Rights to Property Act, 1937. It also may be noted that the said act contemplated and considers the rights of widows. However, there is absolutely no solace provided to daughters and their rights in the said Act and

therefore, the plaintiff is not in a position to take advantage thereof.

5. In the result, as both the courts below have concurrently found that the plaintiff has no share in the suit property, I do not intend to interfere with the findings recorded by both the courts below in this regard, as those are being legal and proper and as such the appeal stands dismissed.